REMARKS

Claims 1-20 are pending in the Application. In the current Office Action, Claims 1-5 and 19-20 are rejected under U.S.C. 112, second paragraph; Claims 13 and 14 are objected to; and Claims 1-12 and 15-20 are rejected under either 35 U.S.C. §102 or 35 U.S.C. §103.

35 U.S.C. §112

Claims 1 and 19 have been amended and now reflect language that is not indefinite as asserted by the Examiner. Accordingly, the Examiner is respectfully requested to withdraw his rejection of claims 1-5 and 19-20 under 35 U.S.C. §112.

35 U.S.C. §102 under Wei et al.

In paragraph 3 of the Office Action, the Examiner rejects Claim 1 under 35 U.S.C. § 102(b) as being anticipated by Wei et al. US 6,152970 (hereafter Wei). Applicants traverse the Examiner's rejection for at least the reasons stated below.

The Examiner broadly cites the Summary presented in Wei. To the extent that Applicants understand the Examiners' rejection, the disclosure in Wei of "sealed to form a ultracapacitor substantially free from water" is what is being cited against Applicants' claim limitation of a "hermetically" sealed double-layer capacitor.

Looking to Claim 1, Applicants claim a double layer capacitor that is sealed "hermetically ... to substantially inhibit an influx of impurities into the electrolyte

solution." The term "hermetic" is defined by the Applicants in paragraph [0100] as a "leak rate of less than .00005 $g/m^2/day$ ..." In paragraph [0155], an embodiment of Applicants' hermetic seal is described as being formed by a "glass-metal seal." In paragraphs [0195-0197], the characteristics and benefits provided by Applicants' glass-metal hermetic seal to that of a prior art capacitor "non-hermetically" sealed by a "polymer" are described.

In Wei, starting in col. 5, line 46, a seal is described as being formed by the use of "glues," and "pastes." The "sealants" described by Wei falls within the class of "polymer" that Applicant's have described as providing a "non-hermetically" sealed capacitor. Assuming arguendo that Wei teaches "a capacitor cell that is sealed to form a ultracapacitor substantially free from water," this teaching does not identically teach Applicants' "sealing hermetically." To the extent that sealing is taught in Wei, it is in the context of first applying a voltage to a cell that is placed in vacuum. The voltage and vacuum are used to eliminate moisture. Sealing of the Wei cell (to the extent that glues and pastes are capable of providing a seal) is described so as to provide a method of maintaining the dryness that was achieved in the cell, and not at "sealing hermetically ... to substantially inhibit an influx of impurities into the electrolyte" from the exterior.

If the glues and pastes (i.e. prior art polymers used as by Applicants in their examples) taught by Wei were used in Applicants' invention, the seal thus formed would be non-hermetic. A capacitor modified to comprise a non-hermetic seal teaches away from "sealing hermetically" as described and claimed by the present invention; such a capacitor would accept the influx of impurities in a

same or similar manner to that of Applicants' described prior art capacitors that are sealed by non-hermetic polymers.

If the Examiner intends to maintain his rejection under Wei, Applicants request that he provide more than just a general citation to the Summary to which a more particular response can be drafted by the Applicants. Without more detail, Applicants are unable to respond with any further specificity.

The Examiner's burden under a 35 U.S.C. § 102 rejection requires that all claim limitations be identically disclosed by the prior art; for at least the reasons given above, the Examiner has failed to satisfy this burden.

For at least the above stated reasons, the Examiner has failed in his burden under 35 U.S.C. §102, and Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §102(b) rejection of claim 1 and allowance of this and other outstanding claims.

35 U.S.C. §102 under Farahmandi et al.

In paragraph 4 of the Office Action, the Examiner rejects Claim 6 under 35 U.S.C. § 102(b) as being anticipated by Farahmandi et al. US 5,862,035 (hereafter Farahmandi). Applicants traverse the Examiner's rejection for at least the reasons stated below.

Against Claim 6, the Examiner cites col. 19, line-9-col. 22, line 67. As far as can be understood from the Examiners citation to entire pages of Farahmandi, the Examiner appears to be asserting that the "o-ring 154" or "gasket 168" in Farahmandi anticipates Applicants' "sealing hermetically" a capacitor.

In the Examiner's broad citation to Farahmandi, the Examiner has failed to identically teach Applicants' invention. As far as is understood, all the Examiner has provided citation to are known techniques for sealing a capacitor to prevent electrolyte leakage. In Farahmandi such prevention of leakage is minimized by o-ring 154 or gasket 168.

The Examiner is reminded that o-rings and gaskets fall under the class "polymer" that the Applicants have described as providing a non-hermetic seal. A capacitor modified to comprise a o-ring or gasket teaches away from "sealing hermetically" as described and claimed by the present invention; such a capacitor would accept the influx of impurities in a same or similar manner to that of Applicants' described prior art capacitors that are sealed by non-hermetic polymers.

If the Examiner intends to maintain his rejection under Farahmandi, Applicants request that he provide more than just a general citation to the Summary to which a more particular response can be drafted by the Applicants. Without more detail, Applicants are unable to respond with any further specificity.

The Examiner's burden under a 35 U.S.C. § 102 rejection requires that all claim limitations be identically disclosed by the prior art; for at least the reasons given above, the Examiner has failed to satisfy this burden.

For at least the above stated reasons, the Examiner has failed in his burden under 35 U.S.C. §102, and Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §102(b) rejection of claim 6 and allowance of this and other

outstanding claims.

35 U.S.C. §103

In paragraphs 5-8 of the Office Action, the Examiner rejects Claims 2-5, 7-12, 15-20 under 35 U.S.C. §103 using various combinations of references. Applicants traverse the Examiner's rejection for at least the reasons stated below.

Looking further to an anticipated Non-Final Office Action, the Examiner is reminded that before prior art references can be combined or modified, there must be some suggestion or motivation found in the art to make the combination or modification. It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements. The mere assertion by the Examiner that references can be modified or combined does not make it so, and is insufficient to establish a *prima facie* case of obviousness. Moreover, the mere fact that the modification or combination would be well within the ordinary skill in the art, by itself, is insufficient to establish a *prima facie* case of obviousness. The Examiner has the burden to show the additional step of how the knowledge of the skilled artisan leads to the suggestion or motivation. As well, the suggestion or motivation can only come from the art that existed at a time prior to the invention and cannot come from the invention itself.

For at least the reasons that Claims 2-5, 7-12, 15-20 depend from independent Claims 1 or 6, which as discussed above are allowable over the cited §102 art, Claims 2-5, 7-12, 15-20 are also allowable. Because the Examiner has

failed to make a proper rejection under 35 U.S.C. §102, his combination of §102 references with references under §103 fails in establishing a proper prima facie case under 35 U.S.C. §103. For at least these reasons, Applicants do not wish to prejudice their invention with any other responses under §103 that might unfairly and unnecessarily prejudice their invention, until the rejections under 35 U.S.C. §102 are first corrected or withdrawn by the Examiner. The Applicants await a proper 35 U.S.C. §102 rejection before responding to the §103 rejection, or in the alternative Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §103 rejection of claims 2-5, 7-12, 15-20 and allowance of these and other outstanding claims.

Conclusion

Applicants submit that the foregoing Amendments and response, remarks, and Amendments overcome the Examiner's objections under 35 U.S.C. § 102(b) and § 103(a) and §112. Because the cited references and the Examiner's citations do not teach or suggest the claimed invention, and in light of the differences between the claimed invention and the cited prior art, Applicants submit that the claimed invention is patentable over the cited art, and respectfully request the Examiner to allow Claims 1-20 so that the Application may issue in a timely manner. If there are any questions concerning this amendment, the Examiner is invited to contact the Applicants' undersigned representative at the number provided below.

Respectfully submitted,

Date: 3/2/05

By: _____

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